

LOWENSTEIN SANDLER PC

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Counsel to EnergyCo Marketing and Trading, LLC

**IN THE UNITED STATES BANKRUPTCY
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

LEHMAN BROTHERS HOLDINGS, INC., *et al.*,

Debtor.

Chapter 11

Case No. 08-13555 (JMP)
Jointly Administered

**ENERGYCO MARKETING AND TRADING, LLC'S LIMITED OBJECTION TO
DEBTORS' MOTION FOR AN ORDER PURSUANT TO SECTIONS 105 AND 365 OF
THE BANKRUPTCY CODE TO ESTABLISH PROCEDURES FOR THE
SETTLEMENT OR ASSUMPTION AND ASSIGNMENT OF PREPETITION
DERIVATIVE CONTRACTS**

EnergyCo Marketing and Trading, LLC ("EnergyCo"), by and through its undersigned counsel, submits this limited objection to the motion of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for an order pursuant to 11 U.S.C. §§ 105 and 365 establishing procedures for the settlement or assumption and assignment of prepetition derivative contracts (the "Motion"). In support of this limited objection, EnergyCo respectfully states:

RELEVANT BACKGROUND

A. Relevant Procedural Background.

1. On September 15, 2008 (the "Petition Date"), Lehman Brothers Holdings,

Inc. (“LBHI”) filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). On and after the Petition Date, the other Debtors in these cases filed voluntary petitions for relief. The Debtors’ chapter 11 cases are being jointly administered in this Court.

2. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to section 1107 and 1108(a) of the Bankruptcy Code.

3. On September 17, 2008, the United States Trustee appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code.

B. EnergyCo’s Relationship With The Debtors.

4. EnergyCo and Lehman Brothers Commodity Services Inc. (“LBCS”) were parties to that certain International Swap Dealers Association, Inc. (“ISDA”) Master Agreement (the “Master Agreement”) and Credit Support Annex (the “Credit Support Annex”) both dated as of October 16, 2007, collectively the “ISDA Agreement”).

5. By letter dated September 25, 2008, EnergyCo, as the non-defaulting party under the ISDA Agreement, informed LBCS that an Event of Default had occurred under the Master Agreement and that as a result, EnergyCo was designating September 25, 2008 as the Early Termination Date in respect of all outstanding Transactions (as defined in the Master Agreement) under the Master Agreement.

C. The Motion.

6. Through the Motion, the Debtors seek to establish procedures for the assumption and assignment of prepetition derivative contracts and the settlement of terminated derivative contracts as to which EnergyCo is or may have been a counterparty. EnergyCo takes no position with respect to the proposed procedures for the assumption and assignment of derivative contracts because they are inapplicable to EnergyCo as a result of the post-petition termination of EnergyCo’s derivative contract with LBCS. However, the proposed procedures dealing with terminated derivative contracts are spartan, designed to give the Debtors maximum

flexibility, and do not appear to take into account the rights of EnergyCo under the terminated derivative contracts. EnergyCo also notes that the Debtors provide no legal basis, other than section 105(a) of the Bankruptcy Code, to support the proposed procedures dealing with terminated derivative contracts.

LIMITED OBJECTION

7. EnergyCo is concerned that the proposed procedures dealing with terminated derivative contracts will be used offensively by the Debtors as superseding EnergyCo's legal and contractual rights, and for seeking a stay of the enforcement by EnergyCo of its legal or contractual rights. Accordingly, EnergyCo joins in the relevant portion of the limited objection by Royal Bank of America, *see* Docket No. 1720, as well as similar objections by other parties, and requests the inclusion of the following reservation of rights language in any order approving the Motion:

Nothing in this order shall be construed to supersede, suspend or otherwise interfere with (i) the legal and contractual rights of parties to terminated Derivative Contracts, to the extent such legal and contractual rights are enforceable in the Debtors' cases under the Bankruptcy Code (the "Enforceable Rights"); and (ii) the commencement or continuation of any civil proceeding by any party to a terminated Derivative Contract with respect to such party's Enforceable Rights, including, without limitation, any such adversary proceeding commenced or pending in this Court.

8. Including the foregoing language in any order approving the Motion should adequately protect EnergyCo's legal and contractual rights under any terminated derivative contracts to which it was a counterparty without impeding the Debtors' efforts in respect of the terminated derivative contracts.

9. EnergyCo reserves all of its rights under any derivative contract with the Debtors to which it is a counterparty and nothing contained herein, including without limitation the requested language for inclusion in any order granting the Motion, is an admission or a waiver of any rights or claims that EnergyCo may be entitled to assert in these cases.

WHEREFORE, EnergyCo respectfully requests that the Court deny the Motion unless protective language as set forth above is included in any order granting the Motion.

Dated: November 26, 2008
New York, New York

Respectfully submitted,

LOWENSTEIN SANDLER PC

By: /s/ Michael S. Etkin

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